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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtor.

- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

April 20, 2007

10:05 a.m.

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

1 MOTION for Omnibus Objection to Claim(s) Debtors' Tenth Omnibus
2 Objection (Procedural) Pursuant To 11 U.S.C. 502(b) And Fed. R.
3 Bankr. P. 3007 To Certain (A) Duplicate And Amended Claims And
4 (B) Equity Claims ("Tenth Omnibus Claims Objection")

5
6 MOTION for Omnibus Objection to Claim(s) Debtors' Eleventh
7 Omnibus Objection (Substantive) Pursuant To 11 U.S.C. 502(b)
8 And Fed. R. Bankr. P. 3007 To Certain (A) Insufficiently
9 Documented Claims (B) Claims Not Reflected On Debtors' Books
10 And Records, (C) Untimely Claims, And (D) Claims Subject To
11 Modification ("Eleventh Omnibus Claims Objection")

12
13 FIRST Application for Interim Professional Compensation of
14 Services Rendered and Reimbursement of Actual and Necessary
15 Expenses Incurred by PricewaterhouseCoopers, LLP to Provide
16 Certain Sarbanesoxley Compliance, Tax and Financial Planning,
17 and Other General Tax Consulting Services to Delphi
18 Corporation, et al., for PricewaterhouseCoopers, LLP.

19
20 NOTICE of Hearing of Second Interim Fee Application filed by
21 PricewaterhouseCoopers, LLP.

22
23
24
25

1 MOTION to Authorize Motion For Order Under 11 U.S.C. Section
2 363(b) And Fed. R. Bankr. P. 6004 Authorizing Debtors To Enter
3 Into Application Maintenance And Support Agreements filed by
4 John Wm. Butler Jr. on behalf of Delphi Corporation.

5

6 MOTION to Authorize Motion For Order Under 11 U.S.C. Section
7 363(b) And Fed. R. Bankr. P. 6004 Authorizing Debtors To Enter
8 Into Finance Outsourcing Agreement filed by John Wm. Butler Jr.
9 on behalf of Delphi Corporation.

10

11 MOTION to Extend Time Motion For Order Under 11 U.S.C. Section
12 365(d)(4) Further Extending Deadline To Assume Or Reject Leases
13 Of Nonresidential Real Property filed by John Wm. Butler Jr. on
14 behalf of Delphi Corporation.

15

16 MOTION to Extend Time Motion To Further Extend Time Period
17 Within Which Debtors May Remove Actions Under 28 U.S.C. Section
18 1452 And Fed. R. Bankr. P. 9006 And 9027 filed by John Wm.
19 Butler Jr. on behalf of Delphi Corporation.

20

21 MOTION for Relief from Stay Motion of Furukawa Electric North
22 America APD and Furukawa Electric Co., Ltd. (a) For Abstention
23 Pursuant to 28 U.S.C. 1334, (b) For Relief From Automatic Stay
24 Pursuant to 362(d) of Bankruptcy Code, and (c) For Order
25 Limiting Scope of the Claim Objection Hearing. filed by Gerard

DiConza on behalf of Furukawa Electric North America ADP, Inc.
and Furukawa Electric Company.

MOTION for Relief from Stay, if Applicable, to Proceed with
Litigation Against Larry Graves, a Non-Debtor Delphi Employee,
in the Circuit Court of the Second Judicial District of Hinds
County, Mississippi filed by Michael Leo Hall on behalf of
Wachovia Bank, National Association.

NOTICE of Adjournment of Hearing in 07-01435-rdd Delphi
Corporation v. National Union Fire Insurance Company of
Pittsburg

Transcribed By: Esther Accardi

1 A P P E A R A N C E S :

2 SKADDEN ARPS SLATE MEAGHER & FLOM, LLP

3 Attorneys for Debtor

4 333 West Wacker Drive

5 Chicago, Illinois 60606

6

7 BY: JOHN WM. BUTLER, JR., ESQ.

8

9 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

10 Attorneys for Delphi Corporation

11 Four Times Square

12 New York, New York 10036

13

14 BY: KAYALYN A. MARAFIOTI, ESQ.

15 THOMAS MATZ, ESQ.

16

17 TOGUT SEGAL & SEGAL, LLP

18 Attorneys for Debtor

19 One Penn Plaza

20 New York, New York 10119

21

22 BY: NEIL BERGER, ESQ.

23 LARA SHEIKH, ESQ.

24

25

BURR & FORMAN, LLP

Attorneys for Wachovia Bank

3100 Southtrust Tower

Birmingham, Alabama 35203

BY: D. CHRISTOPHER CARSON, ESQ.

JASON D. WOODWARD, ESQ.

LATHAM & WATKINS, LLP

Attorneys for Creditors' Committee

885 Third Avenue

New York, New York 10022

BY: ROBERT ROSENBERG, ESQ.

D'AMATO & LYNCH

Attorneys for National Union Fire

70 Pine Street

New York, New York 10270

BY: STEPHEN F. WILLIG, ESQ.

WEIL GOTSHAL & MANGES, LLP

Attorneys for General Motors

767 Fifth Avenue

New York, New York 10153

BY: JEFFREY L. TANENBAUM, ESQ.

KRAMER LEVIN NAFTALIS & FRANKEL, LLP

Attorneys for EDS

1177 Avenue of the Americas

New York, New York 10036

BY: THOMAS MAYER, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Delphi Corporation.

3 MR. BUTLER: Your Honor, good morning. Jack Butler,
4 Kayalyn Marafioti are here along with Tom Matz from Skadden
5 Arps representing Delphi Corporation for its seventeenth
6 omnibus hearing for April 2007. Your Honor, we filed an agenda
7 listing the matters that are before the Court today. There are
8 thirteen matters. And I'd like to use the agenda order, if I
9 may.

10 THE COURT: Okay. That's fine.

11 MR. BUTLER: Your Honor, matters 1 and 2 on the
12 agenda are the creditors' committee, GM claims and defenses
13 motions, so called STN motion at docket number 4718. And the
14 equity committees ex parte motion at docket number 5229. By
15 agreement with the parties these matters have been, again,
16 adjourned to the May 31st omnibus hearing.

17 THE COURT: Okay.

18 MR. BUTLER: Your Honor, the next matter on the
19 adjourned docket is the motion of ATEL Leasing Corporation for
20 allowance of payment of an outstanding post-petition amount as
21 an administrative claimants other relief at docket number 6990.
22 In this motion ATEL seeks allowance of a claim based on alleged
23 outstanding post petition payments under some equipment leases.
24 We continue to try to reconcile these matters and to sort out
25 the matter consensually. It's our belief that it would make

1 sense to continue this to the May 31st hearing and the parties
2 have agreed to do so.

3 THE COURT: Okay.

4 MR. BUTLER: Your Honor, matters 4 and 5 are being
5 handled by Mr. Berger.

6 MR. BERGER: Good morning, Judge. Neil Berger, Togut
7 Segal & Segal. Your Honor, number 4 is a motion by Wachovia
8 Bank NA separate from the other Wachovia matter on the calendar
9 today. This Wachovia branch seeks a motion for an order
10 allowing an administrative expense claim. This concerns
11 transactions with a supplied management agent. And below the
12 actual transaction there are a large number of different pieces
13 of paper that need to be looked at. We're trying to reconcile
14 it. There are some legal issues involved. By agreement of the
15 parties we agreed to adjourn it and we'd ask that Your Honor
16 carry it to the next omni hearing.

17 THE COURT: Okay. That's fine.

18 MR. BERGER: The next is number 5, Furukawa Electric,
19 seeks relief from the automatic stay or abstention. Your
20 Honor, as part of our claim objection process we object to a
21 2.5 million dollar claim filed by Furukawa. In the debtor's
22 statement we ask that the Court consider the debtor's claim,
23 approximately twenty-four million dollars, as part of that
24 claim objection process. The response was this motion for
25 abstention asking the Court to abstain from the claim objection

1 process. And instead allow Furukawa to liquidate its claim in
2 the state court. We did serve our response and Furukawa
3 noticed on the response that the hearing to consider its motion
4 was scheduled for today and not the 26th. They were unaware of
5 the entry of an order rescheduling today's hearing. They asked
6 for the adjournment, we agreed to it, settlement negotiations
7 were ongoing before today, we'll try to use the time between
8 now and the next omnibus hearing to see if we can advance
9 those.

10 THE COURT: Okay. That's fine.

11 MR. BUTLER: Your Honor, the next matter on the
12 agenda is the debtor's motion seeking approval to enter into an
13 application maintenance and support agreement. This is at
14 docket number 7524. Your Honor, this is the second in a series
15 of motions dealing with the IT segment of the business that is
16 part of the debtor's overall SG&A reduction program. As Your
17 Honor I think is aware under the company's transformation plan,
18 part of the plan is to reduce substantially by something
19 approaching a half a billion dollars the SG&A run rate of the
20 company, and this is part of that process. Specifically, the
21 application maintenance agreements that are before the Court
22 today, are comprised of two separate agreements for application
23 maintenance and support services. The first is an agreement
24 with Computer Sciences Corporation, which provides support for
25 a system -- for the SAP system and commercial supply chain and

1 manufacturing services. And the other is an amendment to a
2 master services agreement with Electronic Data Systems
3 Corporation, which provides engineering systems of support.
4 The master services agreement with EDS was earlier authorized
5 by this Court on October 19, 2006 at docket number 5378. And
6 this amendment really deals with the second phase of the IT
7 outsourcing program, which was competitively bid and which was
8 essentially awarded on a split basis to CFC and EDS. And we're
9 using the EDS master agreement as the vehicle to deal with
10 documenting that arrangement.

11 As Your Honor is aware because of the sensitive
12 nature, and competitive nature, of the information surrounding
13 these motions, this motion and the next one I'll speak to were
14 filed under seal of authority of the Court. But the agreements
15 were the motions themselves summarized basically in broad terms
16 or general terms the terms of the agreements. The total cost
17 of the application maintenance agreement is in the range
18 between 150 and 200 million dollars. We have not publicly
19 disclosed the particular amount of the contract because
20 sophisticated parties could actually deduce aspects of the
21 systems -- the cost of the systems and work competitively
22 marketing additional outsourcing series which we'd rather be
23 able to do on a competitive basis without disclosing sensitive
24 information. But it's in the range of 152 to 200 million
25 dollars. The term is for five years. There are transition

1 costs of approximately twenty-five million dollars which are
2 paid by both debtor and non-debtor entities. And there is --
3 this contract will result from the steady state plan that Your
4 Honor has seen previously, net operating savings of about
5 thirteen million dollars.

6 In connection with claims, CSC has not under this
7 arrangement released any claims because any pre-petition
8 agreements they had were not related to the scope of this
9 agreement. There were however some prior EDS agreements that
10 were related to the scope of this contract and as part of the
11 EDS amendment they have released additional termination charges
12 that would otherwise have been payable. So we're not going to
13 be paying them for essentially the privilege of amending the
14 agreement and awarding this business to them. And they have
15 acknowledged that. This will also result in, when fully
16 implemented, a reduction in the global application maintenance
17 staff by about two-thirds as this function is outsourced. We
18 have reviewed this matter with the creditors' committee, the
19 contract and the financial case with them, they are not in
20 objection to the contract. And, in fact, no party has objected
21 to the transaction as we have proposed it.

22 We have Mr. Timothy McCabe, the director of Strategic
23 Sourcing at Delphi Corporation here to testify if Your Honor
24 requires any testimony. But I think the papers set forth a
25 compelling case for this in terms of exercising the debtor's

1 reasonable business judgment inuring to these transactions.

2 THE COURT: Okay. Does anyone else want to address
3 this motion?

4 MR. MAYER: Yes, Your Honor. Tom Mayer from Kramer
5 Levin for EDS. I don't -- I support everything that Mr. Butler
6 said. Just one point of clarification. EDS has a wide range
7 of agreements with this company, both pre and post-petition.
8 And it's true we are releasing claims relating to this one. At
9 some future time we will come before the Court with public
10 claims we have not related to these services. I just wanted to
11 make that statement.

12 THE COURT: But the agreement spells out the types of
13 claims that are being released?

14 MR. MAYER: Yes, Your Honor.

15 THE COURT: Okay. All right. In light of the
16 motion, the committees' review and my review, as well as there
17 being no objections, I don't need testimony on this. And I
18 just want to make sure the admin claim for, I guess, the back
19 up on the intercompany obligations that comports with the DIP
20 agreement, that's within the parameters of the DIP agreement?

21 MR. BUTLER: Yes. We believe it is, Your Honor.

22 THE COURT: All right. Then I'll approve the motion
23 as sought.

24 MR. BUTLER: Thank you, Your Honor. Your Honor, the
25 next matter, matter number 7, is the finance outsourcing motion

1 at docket number 7525. This, again, represents an effort by
2 the company to reduce SG&A as part of its transformation plan.
3 This financing outsourcing agreement as proposed between Delphi
4 and Genpact International LLC. It provides for the outsourcing
5 of certain of the debtor's accounts receivable, accounts
6 payable, fixed assets, travel and expense reporting, general
7 ledger and contract administration processes. We have filed a
8 redacted version of this agreement previously and have
9 provided, as we did in the other matter, an unredacted copy of
10 the agreement to the creditors' committee and to the U.S.
11 Trustee.

12 Your Honor, this particular program as we stated in
13 our motion, the cost of this program is between 180 and 220
14 million dollars. The term is for eighty-eight months. There
15 are transition costs of seventy-eight million dollars that we
16 estimate in connection with this. About a third of these costs
17 will be borne by debtor entities, about two-thirds by non-
18 debtor entities. We have estimated the savings -- a net
19 operating savings from the steady state plan Your Honor has
20 seen before at about 150 million dollars. There are no claims
21 related issues with Genpact because they don't hold any pre-
22 petition claims against the debtors. And ultimately, there'll
23 be about 650 salaried jobs in the United States and Europe that
24 will eventually be impacted by the implementation of this
25 agreement. This program is one that has -- again, is part of a

1 very detailed examination by the company of its global
2 corporate support services. We expect to continue to examine
3 the financial areas, as well as other areas of the company. I
4 expect that we may be back to the Court with additional
5 programs as we move forward. But again, Mr. Sheehan, our chief
6 restructuring officer, who is here in the courtroom today,
7 would be the company's witness if necessary to review the
8 debtors and to explain the basis the debtor's business judgment
9 in moving forward with this agreement. We, again, as we have
10 with these other agreements, reviewed them with the creditors'
11 committee and examined. They have no objection to us moving
12 forward and no objection has been filed by any other party with
13 respect to the relief that's sought here. And, again, as with
14 the last motion, if the Court wants to hear anything we have
15 testimony available.

16 THE COURT: Okay. Does anyone want to address this
17 motion? Just for the record, these are all SG&A type services.
18 There are no actual factoring or sale or credit support in
19 connection with the accounts receivable here. This is all
20 administrative?

21 MR. BUTLER: Not in connection with these
22 transactions. These contracts all deal with the outsourcing of
23 essentially functions, you know -- administrative functions
24 within the company.

25 THE COURT: All right. Okay. In light of my review

1 of the motion as well as the committees' and there being no
2 objection to it, I don't need to hear from Mr. Sheehan. I'll
3 grant the motion in full.

4 MR. BUTLER: Thank you, Your Honor. Your Honor, we
5 have two procedural motions before the Court. The first is
6 that -- is matter number 8. It's our second Section 365(d)(4)
7 deadline extension motion at docket number 7529. And number 9
8 on the agenda is our third removal deadline extension motion at
9 docket number 7530. In both instances we're asking the Court
10 to extend the time with respect to these matters to an outside
11 date of September 30, 2007. In the case of the 365(d)(4)
12 matter, we're dealing with approximately eighty leases now,
13 which is less -- about ten percent/twelve percent less than we
14 were back here on our original motion. And that has to do with
15 the fact that we have been rejecting motions and otherwise
16 rationalizing the lease portfolio in connection with other
17 orders Your Honor's entered that allows the company to
18 essentially operate the real estate portion of its business in
19 the ordinary course, with reviewing those with the creditors'
20 committee and others as we move forward. So most of the real
21 estate matters don't come before the Court unless they meet
22 certain thresholds. And we have with respect -- other than a
23 response that was filed by Orix Warren LLC at docket number
24 7666, which simply reserved its right to come before the Court
25 to seek to shorten time for cause which is already provided for

1 in the proposed order. There has been no other objection or
2 response filed by any party.

3 And with respect to the third removal motion
4 similarly, we have sought similar relief, there is no
5 objection. And that deadline -- or that proposed extension is
6 a little different. It would actually be to the later of the
7 September 30, 2007 or thirty days after entry of an order
8 terminating the automatic stay with respect to the particular
9 action that relief is granted by the Court. This is -- these
10 deadlines, Your Honor, are from the company's view consistent
11 with the current exclusivity motion which calls for filing of a
12 plan later this summer. And in matters that I'll address
13 later, the company's plan emergence later this year as we move
14 forward with our framework and processes.

15 THE COURT: With the removal motion, did you serve
16 the known parties to litigations?

17 MR. BUTLER: I believe that has been our practice,
18 Your Honor, yes.

19 THE COURT: You're aware of. Okay. Does anyone want
20 to speak on these two motions? All right. I think they're
21 self explanatory and I'll grant each of them. The reservation
22 on the leases, you're correct, if they were any less or has the
23 ability to seek to shorten the period to assume or reject. But
24 cause has been shown for an extension, so I'll grant that as
25 well as the request to extend the time to remove actions.

1 MR. BUTLER: Thank you, Your Honor. Your Honor, that
2 completes the docket of uncontested or agreed to settle matters
3 for this morning's hearing. We now move to the contested
4 matters. The first matter is agenda item number 10, Wachovia
5 Bank's relief from stay motion, at docket number 5951. Mr.
6 Berger is representing the company in connection with that
7 matter. And I'll cede the podium to counsel for Wachovia.

8 MR. BERGER: Your Honor, Neil Berger, for the
9 debtors. And Chris Carson is here for Wachovia. We agreed
10 that we would stand before Your Honor to confirm our agreement
11 that although the motion may make an argument and may make
12 reference to a claims liability, a claim objection issue, we're
13 not here today to try to determine liability or to adjudicate
14 the debtor to clam objections.

15 THE COURT: Right. Okay.

16 MR. CARSON: Good morning, Your Honor. Chris Carson.
17 I'll also note for the record that my colleague Jason Woodward
18 is in the courtroom as well as Andy Rand from Wachovia.

19 THE COURT: And I also gather that the parties are
20 going forth on the papers, they're not presenting any
21 testimony?

22 MR. BERGER: Yes, sir.

23 MR. CARSON: Based on the stipulation, yes, Your
24 Honor.

25 THE COURT: Okay.

1 MR. CARSON: Your Honor, I guess the first thing I
2 want to make clear, I think it's clear for the record, is we
3 are not seeking relief from the stay to pursue any of the
4 debtor entities in this Court. We are merely seeking, quite
5 frankly, declaration from this Court that the stays now stand.
6 There has not been a stay extended to Mr. Larry Graves on an
7 injunction imposed by this Court, which would allow us to
8 pursue our claims against him in Mississippi state court. As I
9 think Your Honor has been able to see from the pleadings we
10 have named Mr. Graves as an individual defendant in a lawsuit
11 that arises out of misrepresentations made by Delphi in order
12 to get Wachovia to loan 800 thousand dollars to one of its
13 troubled suppliers.

14 As an initial matter we think that the only fact that
15 is before the Court and relevant to the proceedings today is
16 the ones that I just stated. There is no stay that has been
17 extended, there is no injunction that's been put in place. To
18 the extent there are additional facts the Court feels like
19 bears on this proceeding we think that Rule 7001 requires an
20 adversary proceeding to be instituted and it's not been
21 instituted. I don't think that the Court can treat Delphi's
22 objection as a motion or adversary proceeding, because if you
23 look at the relief requested they merely ask that our motion be
24 denied.

25 Turning to the merits of whether or not a stay should

1 be extended, Your Honor, there are four basic arguments as I
2 read it that Delphi makes that the stay should be extended
3 because Mr. Graves may be entitled to indemnification. A
4 ruling in favor or against Mr. Graves in Mississippi state
5 court make work as collateral estoppel here in the bankruptcy
6 court. And the fact that the case is allowed to proceed
7 against Mr. Graves, Delphi's efforts to reorganize will be
8 hindered or hampered because they'll have to devote time and
9 resources to defending him down in Mississippi. I guess they
10 also argue that the case down in Mississippi against Mr. Graves
11 is not anywhere near being ready for trial.

12 Your Honor, we respectfully disagree with those
13 positions. On the indemnification issue we think a close
14 reading of the law requires two things. One, that it be an
15 absolute indemnity, an unconditional right to payment. It's
16 unclear to me from the record whether or not Mr. Graves would
17 be entitled to -- has an unconditional right to payment. But
18 even if he does we also do not believe that a judgment against
19 Mr. Graves in this Court for which Delphi would have to
20 indemnify him, would pose a threat to Delphi's ability to
21 financially reorganize. And if you look at the cases that talk
22 about this you have the asbestos cases, you have the AA Tribens
23 case which Delphi cited which is Delcom Shield case, where
24 you're talking about liabilities that arise out of hundreds to
25 thousands of lawsuits. You have those cases, that's clearly

1 not the case here. On the flip side of it, you have cases
2 where you're looking at individuals who are indemnified in one
3 action. But the amount of the indemnification is so great that
4 again, it threatens the company's ability to reorganize. We
5 simply do not think that is the case here. Much the same could
6 be said with respect to the collateral estoppel concerns that
7 are raised in Delphi's motion. I would also note that in the
8 case law it's clear that collateral estoppel concerns a loan,
9 have not served as a justification for extending the stay or
10 imposing an injunction.

11 Lastly, Your Honor, as to pursuing Mr. Graves and
12 it's effect on Delphi's reorganization effort, the case law
13 there talks about when the individual is a key player in the
14 reorganization. Mr. Graves simply is not a key player. And I
15 don't think Delphi has raised that issue in its pleadings.
16 Having said that, Your Honor, that pretty much completes my
17 argument for the morning.

18 THE COURT: Okay. Well, let me ask you a couple of
19 questions. Am I right that Mr. Sweet was counsel for the
20 plaintiff in the action?

21 MR. CARSON: Yes, Your Honor. Mr. Sweet is co-
22 counsel.

23 THE COURT: Okay. And assume for the moment, because
24 you do have this as an alternative aspect of the relief you're
25 seeking, that I find that the automatic stay does extend to

1 this action, what is your argument that -- under Sonax the
2 litigation should go forward.

3 MR. CARSON: Okay.

4 THE COURT: In essence that it would go forward
5 against Delphi. I understand you say it would only go ahead
6 against Mr. Graves, but if I find that the stay actually does
7 extend to him, the rationale would be that there would be an
8 identity of interest between Graves and Delphi. So in essence
9 it would be going ahead against Delphi.

10 MR. CARSON: Okay. And what would be my argument,
11 Your Honor, for why we should --

12 THE COURT: Under Sonax.

13 MR. BERGER: Under Sonax I would cite the same
14 factors that I did or the same facts that I did with Mr. Graves
15 individual. Plus I would add this. Contrary to their
16 assertions and if you look at -- and I can see Your Honor's
17 read the transcript from the hearing where Mr. Graves was added
18 as a defendant, these are Mississippi state law issues that are
19 best decided by the Mississippi state court. The case,
20 contrary to representations in our opinion, is ready for trial
21 or will be ready for trial within the standard time that Judge
22 DeLaughter allows in his cases, which is ninety days for
23 discovery and I think you saw from the court hearing
24 transcript, that a trial date was going to be set at that
25 hearing, and it was being in bankruptcy that prevented the

1 parties from proceeding.

2 THE COURT: What about the issue of the other claim
3 that's been assigned to Wachovia, that the debtor's raise,
4 that's pending here.

5 MR. CARSON: I think that that -- if I follow the
6 question that Your Honor is asking, I do think that that would
7 impact because I would expect that Lextron would seek relief in
8 order to proceed against Delphi in the case that it has pending
9 in Mississippi federal court, I believe.

10 THE COURT: Well, but I thought that claim had been
11 assigned to Wachovia.

12 MR. CARSON: Your Honor, Wachovia has received an
13 assignment, has the right to take over the litigation, but it
14 has chosen not to do that thus far. It also has the security
15 interest in the litigation.

16 THE COURT: So it's your thought that those two
17 litigations would proceed in separate courts?

18 MR. CARSON: To be honest, Your Honor, I probably
19 have not thought about that. But if things now stand, yes,
20 they would proceed in separate courts.

21 THE COURT: Okay. Thank you.

22 MR. CARSON: Thank you.

23 MR. BERGER: Neil Berger for the debtors. Your
24 Honor, courts in this circuit have long recognized that the
25 congressional intent to protect debtors and their estates would

1 be frustrated by allowing creditors like Wachovia to do
2 indirectly what the code expressly prohibits. This is a claim
3 adjudication matter. I think Your Honor's comments that we
4 embrace and observe recognize that this is a direct claim by
5 Wachovia --

6 THE COURT: Well, I was just asking him a
7 hypothetical question.

8 MR. BERGER: Then I'll go to my presentation Your
9 Honor, and stop me when you like.

10 THE COURT: Okay.

11 MR. BERGER: The original complaint, Delphi's Exhibit
12 4, is attached to the proof of claim that Wachovia filed in
13 this Court. Wachovia named the Delphi defendants as the Delphi
14 corporate entities. They did name some individuals, not as
15 parties, but only as representatives of the debtor. The debtor
16 is carrying out their functions in the business relationship by
17 employees, that's how corporations work. Paragraphs 23 to 29
18 describes how Delphi corporate entities, acting through their
19 representatives made allegedly misrepresentations. Mr. Graves,
20 who is the center of the motion today is only mentioned once as
21 far as conduct is concerned, and he simply signed a letter on
22 behalf of his superior. Contrary to the assertions of
23 Wachovia, there aren't any specific allegations of independent
24 wrongdoing by Mr. Graves. He was acting as an employee of the
25 debtors. Wachovia did name Sidney Johnson, who is now the vice

1 president of our global supply management, at the time the
2 director of GSM for Delphi Packard.

3 In September 16, 2005, two and a half years after the
4 original complaint was filed and just three weeks before Delphi
5 sought bankruptcy relief, Wachovia went to the Mississippi
6 state court and sought permission to amend the complaint to add
7 Mr. Graves, the only individual they sought to add. The
8 Mississippi state court orally granted that application pre-
9 petition, but an order granting that relief was never submitted
10 to the state court. The amended complaint was served and
11 sometime after that, in August of '06, the Mississippi state
12 court recognized the mechanical deficiency by an order not
13 having been entered. And in the interest -- and we cite this
14 as an exhibit to our papers, the Mississippi court expressly
15 states that in the interest of justice and judicial economy
16 they would avoid striking the amended complaint and requiring
17 another motion to be filed and another hearing to be had,
18 and the complaint stood.

19 Next, Your Honor, Exhibit 6 to our papers. The
20 amended complaint simply asks --

21 THE COURT: Well, it did more than that. They were
22 concerned -- I think they wanted to make it clear, the Judge
23 wanted to make it clear, that he was still protecting Mr.
24 Graves and Delphi if the automatic stay did apply.

25 MR. BERGER: That's absolutely correct, Your Honor, I

1 was going to address that. Since we're here now, I'll say that
2 the Mississippi state court announced that it would consider a
3 motion concerning the automatic stay and that it would consider
4 an application for costs, we call them sanctions.

5 It's significantly though, Your Honor, in Exhibit 6.
6 The amended complaint, all it does is add Mr. Graves to the
7 definition of Delphi defendants, those corporate entities. The
8 allegations are all the same, it's allegations of conduct taken
9 in his representative capacity as a manager and employee of the
10 debtor. It simply says that he participated in the Delphi
11 defendant's actions.

12 Your Honor, Exhibit 5 to our papers is the second
13 amended complaint. In September 23 of '05, Wachovia sought to
14 amend the complaint for a second time, this time to add Mr.
15 Johnson, Mr. Naler, Ms. Everett and Jonathan Saignor and Devin
16 Nelson, all Delphi employees. The allegations in the second
17 complaint, Your Honor, were prepared obviously from a word
18 processor, there's a copy and it was pasted into the second
19 amended complaint and all that changed were the names of the
20 individuals. Same allegations, same conduct, alleged conduct
21 taken by Delphi employees in the course of their representation
22 of the corporate entity.

23 Your Honor mentioned earlier that when the Court
24 denied the application for the second amended complaint, the
25 Mississippi state court found that these are acts by employees

1 in their representative capacity, there is no basis for
2 individual liability. Based upon these allegations the
3 automatic stay applies to Delphi employees.

4 Your Honor, as we went through the chronology, Mr.
5 Graves was added as a defendant just pre-petition. Mississippi
6 state court orally granted that application. Wachovia moved
7 post-petition to add other defendants. From the debtor's
8 perspective it's clear that the Mississippi state court
9 recognizes that the automatic stay applies not only to the
10 direct claims against Delphi but to the claims asserted by
11 Wachovia against the individuals who are acting in the capacity
12 for the debtors. Based upon those allegations, the motion was
13 denied.

14 Your Honor, Wachovia asserts that the issue of the
15 automatic state was never raised, we're puzzled by that
16 statement. Mississippi state court had pleadings before it.
17 Mr. Graves incorporated it in its pleadings. The Mississippi
18 state court embraced the concept and entered an order
19 addressing the automatic stay. And Wachovia's presented that
20 issue to this Court. So we think it's properly before the
21 Court and the stay ought to be extended to Mr. Graves. We
22 can't understand why Wachovia would have brought that issue to
23 the Court and now assert it's not aware of it.

24 Addressing quickly, Your Honor, because I think we've
25 done it in our papers, there's an identity of interest here.

1 These are claims against Delphi, as Your Honor observed a few
2 moments ago. In the transcript Mr. Sweet did represent
3 Wachovia in the state court. And particularly at page 7 of the
4 transcript where Wachovia sought the amended complaint, Mr.
5 Sweet said and I quote "the only issue with Mr. Graves is we
6 are going to bring him in his official capacity." That's the
7 only additional thing. So there's no whole new case, no whole
8 new theories, not even any new issues. The original issues
9 were direct claims against Delphi, the debtors, the automatic
10 stay applies and they're asserting those same claims this time
11 by an end run around of the automatic stay by asserting them
12 against the individuals.

13 Your Honor, we think that there is a close identity
14 of interest here. There is an indemnity obligation. Delphi
15 has been and will continue to, if it's required, advance the
16 defense costs and have an indemnification obligation to Mr.
17 Graves, he is an employee working, acting in the scope of his
18 representations of the debtors. Article 5.1 of the company
19 bylaws attached to the debtor's response specifically spelled
20 that out. That bylaw was provided to Wachovia in the state
21 court action, they were aware of that when the automatic stay
22 issue was raised in the state court.

23 I don't believe that an indemnification obligation
24 has to be absolute. I don't think the case -- some of the case
25 law refers to absolute indemnity obligations. I don't think

1 that the amount of money is the turning point here, Your Honor.
2 Recently Judge Lifland extended the automatic stay to non-
3 debtor third party sureties. The amount in controversy in that
4 multi billion dollar case was a claim for approximately twenty
5 million dollars. The claims asserted by Wachovia are
6 approximately 6.8 million dollars. The Lextron claims say on
7 their face 800 thousand plus consequential damages, I think
8 that falls into the labor source bucket, but easily one could
9 imagine those damages ranging in the ten odd million dollars.
10 So you're in the same realm of the Calpine damages. More
11 importantly, Your Honor, these are direct claims. The debtors
12 can't sit idly by and let litigation go forward. Today we're
13 hearing for the first time, perhaps, in two different courts
14 and face issues of collateral estoppels and evidentiary
15 prejudice. Those are close issues of identity of interest.

16 Your Honor, we don't think that they've established
17 cause. We address Sonax, I'm not sure that Sonax would apply.
18 Although, in the case where a creditor is seeking to liquidate
19 an unsecured claim in a foreign court. But to the extent that
20 Sonax does apply we've listed in our papers and I'm prepared to
21 answer questions why the balance of harm tips decidedly in
22 favor of the debtors in extending the automatic stay. Wachovia
23 hasn't articulated any reason why there would be prejudice to
24 having the action against Mr. Graves continue stayed. There
25 would be no evidentiary prejudice. The indemnity obligation

1 continues. There is no insurance here to defend Mr. Graves as
2 a potential liability. The relevant Sonax factors that apply
3 to this decision tip decidedly in favor of extending the stay,
4 and maintaining the stay. We think that's the cause element,
5 the burden that Wachovia carries simply hasn't been satisfied,
6 Your Honor.

7 THE COURT: Okay.

8 MR. CARSON: Your Honor, could I briefly respond to
9 some points.

10 THE COURT: Sure. That's fine.

11 MR. CARSON: Starting back, and I'll try to cover all
12 those. In terms of Mississippi state court's findings. The
13 findings that I believe Mr. Berger refers to were in connection
14 with refusing to allow a second amendment to the complaint.
15 There certainly has been no finding that Mr. Graves is not
16 personally liable under Mississippi law for tortious acts that
17 he committed within in line and scope of his employment. We've
18 cited case law to you where that is the law of Mississippi.
19 Again, I'm not really sure that's a fact that is really
20 pertinent to what we're here about today, but for purposes of
21 clearing the record I wanted to do that.

22 THE COURT: But couldn't the same be said of the
23 other individuals?

24 MR. CARSON: Meaning?

25 THE COURT: Couldn't the same point be made of the

1 other individuals that Wachovia sought to be named in the
2 second amended complaint?

3 MR. CARSON: In terms that they could be held
4 personally liable, yes, Your Honor. I do believe the same can
5 be said.

6 THE COURT: So that didn't seem to influence the
7 Mississippi court in interpreting the stay.

8 MR. CARSON: It did not seem to influence Mississippi
9 court in interpreting the stay. Of course, our contention
10 would be, Your Honor, that's it's really not the Mississippi
11 state court that decides whether the stay should be extended or
12 an injunction imposed.

13 THE COURT: They're perfectly free to decide that.
14 That's very well established under the law.

15 MR. CARSON: If you look at Section 105 it talks
16 about this Court having the orders to carry out what is
17 necessary in this case. And that would be our contention, Your
18 Honor.

19 THE COURT: Okay. I think that would be news to a
20 lot of state court judges around the country. I mean, they
21 could always defer to the bankruptcy courts if they want to,
22 but they don't have to.

23 MR. CARSON: And I think that's what the Mississippi
24 state court has done with respect to Mr. Graves, and that's why
25 we're here today. Because Delphi filed a motion to dismiss Mr.

1 Graves. And in connection with that Judge DeLaughter deferred
2 and wanted to wait and see what this court did with respect to
3 the motion that we have pending here this morning and we are
4 arguing.

5 THE COURT: Well, you beat him to it, right? Did you
6 beat him to it or was it the other way around?

7 MR. CARSON: I think that by the time that argument
8 had been -- let me defer.

9 THE COURT: It's probably not that important.

10 MR. CARSON: We filed this in response to their
11 motion to dismiss.

12 THE COURT: Okay.

13 MR. CARSON: As far as prejudice goes with each
14 passing day are given the reorganization efforts in the
15 automotive industry and Delphi has cited things. And in
16 particular on the banks side of things, we've already had the
17 original bank go through a merger with Wachovia. We would say
18 that as time goes on we are prejudiced in our ability to
19 marshall the evidence and witnesses that we need.

20 THE COURT: But wasn't there a mediation of the
21 Wachovia/Lextron claims?

22 MR. CARSON: There's been no mediation of the
23 Wachovia/Lextron claims. There has been a mediation of the
24 claims between Wachovia and Delphi.

25 THE COURT: But that includes the claim that Lextron

1 assigned to Wachovia.

2 MR. CARSON: In the course of the mediation, Your
3 Honor, certainly there were discussions about the fact that an
4 assignment and the Lextron claims.

5 THE COURT: Okay. And that was in connection with
6 the claims filed in the bankruptcy case.

7 MR. CARSON: That is correct, Your Honor.

8 THE COURT: Okay.

9 MR. CARSON: Lastly, I would just point out that Mr.
10 Berger mentioned a case by Judge Lifland. I believe the case
11 that he's talking about where the stay was extended to the
12 surety was a case where there was concern about assets of the
13 estate being depleted through the surety again. I would
14 distinguish that by saying the assets of Mr. Graves are not
15 critical to the reorganization efforts of Delphi. Thank you,
16 Your Honor.

17 THE COURT: Okay. I have before me a motion by
18 Wachovia Bank N.A. seeking a declaration that the automatic
19 stay under 11 U.S.C. Section 362 does not apply to or could not
20 be extended to litigation pending in Mississippi state court
21 against an employee of a Delphi entity employee, Mr. Graves.
22 And in the alternative seeking relief from the automatic stay
23 to pursue that litigation to the extent that the stay applies
24 to the litigation against him. I should note that the
25 litigation was originally commenced against, not Mr. Graves but

1 a borrower of Wachovia's successor entity, the borrower's name
2 being Lextron Corporation, as well as numerous Delphi entities.

3 Lextron was a second tier supplier to Delphi and it
4 is alleged that Delphi improperly induced Wachovia to keep
5 lending to Lextron and/or breached a commitment through its
6 business support Lextron. Since Lextron is in its own
7 bankruptcy and obviously the debtors are in their bankruptcy
8 the litigation is stayed as to them.

9 Shortly before the Delphi companies filed these
10 Chapter 11 cases the plaintiff, now Wachovia, in the
11 Mississippi action sought to amend the complaint to add Mr.
12 Graves as a defendant. There was a conference in the
13 Mississippi state court in September of 2005, again, before
14 Delphi filed its Chapter 11 case, and the court orally granted
15 Wachovia's motion. The complaint was amended to add Mr. Graves
16 as a party without any additional allegations particular to Mr.
17 Graves being added as well. Rather he was added in the list of
18 Delphi defendants and then all of them, including Mr. Graves,
19 were defined as the Delphi entities.

20 It's relevant to quote the section of the transcript
21 in which the state court authorized the amendment of the
22 complaint. Counsel for the plaintiff, or co-counsel for the
23 plaintiff, Mr. Sweet, stated in the relevant section which
24 appears at page 7, "It's the same exact issues that have been
25 involved in the case. The only issue with Mr. Graves is we are

1 going to bring him in in his official capacity. That's the
2 only additional thing. So there is no whole new case, no whole
3 new theories, not even any new issues."

4 Subsequently, after the start of the Delphi Chapter
5 11 case the plaintiff sought to amend the complaint again, in
6 the same manner, to add additional Delphi employees. And the
7 Mississippi state court determined, as it has the ability under
8 the law to do, that that act of amending the complaint in that
9 manner would constitute a violation of the automatic stay. As
10 the court found in its order dated, April 7, 2006, Southtrust,
11 and again Wachovia is the successor to Southtrust, "Seeks
12 individual liability against the Delphi employees based solely
13 on alleged acts they performed in their representative capacity
14 and in the course and scope of their employment with Delphi.
15 No allegations in the proposed second amended complaint
16 indicate any basis for liability against the Delphi employees
17 in their individual capacity."

18 The court had an opportunity to extend the same
19 analysis to the litigation against Mr. Graves, actually had two
20 opportunities to do so. In the first instance, because no
21 actual order had been entered authorizing the amendment of the
22 complaint pre-petition, the court had the opportunity to say
23 that the entry of such an order would violate the stay.
24 Reading between the lines of the most recent order of the
25 Mississippi state court it seems clear to me that given the

1 oral ruling it declined to get involved, at that point, in the
2 automatic stay issue, but merely wanted to confirm the earlier
3 ruling by the court to permit amendment. However, at the same
4 time, the court very clearly protected Delphi and Mr. Graves,
5 as an officer, of Delphi from the potential consequences of
6 breaching the automatic stay because in its order authorizing
7 the amendment of the complaint it stated "it is further ordered
8 and adjudged that in the event the court subsequently
9 determines that any litigation in this cause against Graves,
10 individually, is barred by the stay in Delphi's bankruptcy
11 proceedings, the court will consider upon motion by Graves
12 assessing plaintiff the reasonable expenses including
13 attorney's fees incurred by him in defending the action brought
14 by the plaintiff's amended complaint." That's from August 23rd
15 of 2006. Mr. Graves subsequently moved to dismiss, including
16 on this ground that the continued prosecution of litigation
17 against him would violate the automatic stay in Delphi's case.
18 In the meantime before the Mississippi court could rule,
19 however, Wachovia made this motion here. And given the
20 pendency of this motion, the Mississippi court has held off on
21 its ruling on the motion to dismiss.

22 Wachovia, in essence, argues that because the
23 litigation is not against the debtor, but against a third
24 party, Mr. Graves, the automatic stay in Delphi's Chapter 11
25 case does not apply to him, citing Teachers Insurance and

1 Annuity Association of America v. Butler, 803 F.2d 61, 65 (2d
2 Circuit 1986) and other cases dealing with claims against third
3 parties. That is clearly the case in respect of the plain
4 language of 11 U.S.C. Section 362(a)(1) which precludes the
5 commencement and continuation of proceedings against the debtor
6 that was or could have been commenced before the commencement
7 of the case under this title.

8 I would note, however, that first it is not so clear
9 to me that the plain language of Section 362(a)(3), which bars
10 any act to obtain possession of property of the estate or
11 property from the estate or electricised control over property
12 of the estate, would not apply here. In any event, the courts
13 throughout the country and in particular in the Second Circuit,
14 have recognized that under proper circumstances the automatic
15 stay does apply to litigation against third parties or in the
16 somewhat confusing parlance of the courts, may be extended to
17 apply to litigation against third parties. This was most
18 recently articulated, I believe, by the Second Circuit itself
19 in Queenie Ltd. v. Nygard International, 321 F.2d 282 (2d
20 Circuit 2003) in which the Second Circuit noted the
21 circumstances in which the automatic stay in a debtor's Chapter
22 11 case would apply to litigation against a co-defendant. And
23 listing several circumstances including in particular actions
24 where "There is such identity between the debtor and the third
25 party defendant that the debtor may be said to be the real

1 party defendant." In the Nygard case the court applied Section
2 362(a) in a situation where it concluded that there was such an
3 identity between the debtor and his wholly owned corporation.
4 In doing so the court discussed and distinguished the requested
5 applicability of the automatic stay to guarantors of that debt.
6 Citing a number of cases that I'll get into in a moment.

7 But I'll note that it's holding is clearly consistent
8 with numerous cases that have found that where there is an
9 identity between the debtor and a co-defendant, such that the
10 action against the co-defendant is in essence an action against
11 the debtor, the automatic stay has been found to apply to
12 and/or extended to the co-defendant. See for example In re
13 North Star Contracting Corporation, 125 B.R. 368 (S.D.N.Y.
14 1991) where the district court found that as the bankruptcy
15 court had found the third party defendant was being sued in his
16 capacity as an officer. And that consequently given the
17 indemnification between the debtor and the officer, and the
18 capacity under which the officer was being sued, in effect the
19 recovery will come from the debtor, because the debtor is
20 required to indemnify its officers for actions taken in pursuit
21 of their performance as officers and directors of the
22 corporation. According to Judge Schwartzberg, and of course,
23 the district court affirmed him, this is really indirectly a
24 suit against the debtor which the plaintiff cannot do directly.
25 See also In re Lomas Financial Corporation, 117 B.R. 64

1 (S.D.N.Y. 1990) which reached the same result under very
2 similar facts.

3 North Star Contracting distinguished cases, and there
4 have been cases since then that are distinguishable, where
5 instead of suing the co-defendant in his or her representative
6 capacity the litigation raised separate grounds for liability
7 against the third party that would not be subject to
8 indemnification of that party as an officer. And, of course,
9 under Delaware law and the law of most states, a corporation
10 cannot indemnify or cannot be liable for an indemnity of an
11 officer where he or she is acting outside of the scope of their
12 professional duties. Such a case was recently decided in the
13 district court in the Plus Funds bankruptcy. DeSouza v. Plus
14 Funds Group, Inc., 2006 U.S. District Lexus, 53392 (S.D.N.Y.
15 August 1, 2006). There Judge Casey found that the
16 circumstances for applying the automatic stay to the third
17 party defendants would not lie because those defendants were
18 being sued for alleged acts, not in a representative capacity
19 but for such causes of action as far as a conveyance and
20 conversion. Therefore, cases like Gray v. Hearst, 230 B.R. 239
21 (S.D.N.Y. 1999) which was a similar fact pattern or applicable
22 as opposed to Lomas and North Star.

23 Judge Casey, in the DeSouza case, says that in the
24 situation where the automatic stay is sought to be applied to
25 an action against a third party or extended to an action

1 against a third party, that party bears the burden of showing
2 that the unusual circumstances lie to cause it to be applied.
3 And I believe that's correct. Although, obviously, the
4 consequences of violating the automatic stay and being wrong as
5 to whether it applies or not still exist.

6 I think that the burden should not be overly
7 emphasized here where the basis for applying this stay is an
8 identity of interest, as opposed to other instances where the
9 automatic stay has been extended based on the unusual
10 circumstances of the effect of the litigation on the debtor's
11 reorganization. In my view where there is an identity of
12 interest based on Queenie v. Nygard, and Lomas, and North Star,
13 and the like, the debtor does not have to show that the
14 continued prosecution of the litigation would otherwise
15 adversely effect the estate such as by distracting management
16 or potentially imposing a serious monetary burden on the
17 estate. That is because I don't believe that the Court should
18 consider, where there's an identity of interest, a preliminary
19 injunction type of analysis but simply satisfy itself that
20 there is an identity of interest or not. Because if the
21 plaintiff is doing indirectly what it can't do directly, I
22 believe 11 U.S.C. Section 362(a)(3) is implicated.

23 So for those reasons I conclude that the stay does
24 apply here. In essence agreeing with the Mississippi state
25 court's analysis that it applied with respect to the other

1 Delphi officers that Wachovia sought unsuccessfully to join in
2 a second amended complaint. I don't have to conclude whether
3 that ruling by the Mississippi court constitutes and so
4 collateral estoppel or not because I simply agree with it, and
5 apply the same logic here.

6 That leaves the second alternative request for relief
7 raised by Wachovia, which is relief from the stay to pursue to
8 litigation against Mr. Graves in Mississippi state court.
9 Rather than have that litigation continue to be stayed I
10 referred earlier to the Second Circuit's decision in the Sonax
11 case which set forth twelve factors that the Court may consider
12 in connection with requests for relief from the stay to pursue
13 litigation in the non-bankruptcy forum. Not all of those
14 factors necessarily may be relevant in every case. What is
15 unusual here, of course, is that the normal choice which is to
16 pursue litigation in state court or alternatively to have the
17 claim be liquidated in the bankruptcy court does not
18 immediately appear on its face here because the request is to
19 pursue litigation only against Mr. Graves, not the debtor. But
20 I've already ruled that in essence that would be pursuing
21 litigation against Delphi. And while I note that in Queenie v.
22 Nygard the second circuit said that a concern about collateral
23 estoppel standing on its own does not necessarily justify
24 applying the automatic stay to litigation against a third
25 party, it has also, as set forth in Lomas and Judge Lifland's

1 recent Calpine case served as a factor in keeping the stay or
2 applying the stay to third party litigation. And here it very
3 clearly seems to me to be a case that the real claim is against
4 Delphi and that's a claim that Wachovia has filed here. So I
5 will apply the Sonax factors because in essence I believe that
6 lifting the stay would make sense only if one lifted it as to
7 all the Delphi defendants.

8 The factors include whether relief would result in a
9 partial or complete resolution of the issues, lack of any
10 connection with or interference with the bankruptcy case,
11 whether the other proceeding involves the debtor as a
12 fiduciary, whether a specialized tribunal with the necessary
13 expertise has been established to hear the cause of action,
14 whether the debtor's insurer has assumed full responsibility
15 for the defense where the action primarily involves third
16 parties, whether litigation in another forum would prejudice
17 the interest of other creditors, whether the judgment claim
18 arising from the other action is subject to equitable
19 subordination, whether the movants' success in the other
20 proceeding would result in a judicial lien avoidable by the
21 debtor in the interest of judicial economy and the expeditious
22 and economical resolution of litigation, whether the parties
23 are ready for trial in the other proceeding and the impact of
24 the stay on the parties and the balance of harms.

25 As I noted, Wachovia has filed a proof of claim in

1 connection with these claims in the Delphi cases. In addition,
2 the other defendant, in essence, the center of the whole case,
3 Lextron, has a claim filed in these cases as well, that it has
4 assigned to Wachovia. Although, it was stated at argument that
5 Lextron has that claim separately pending in district court,
6 federal district court. And that Wachovia has not taken over
7 its prosecution.

8 It also seems to me, based on the record before me,
9 which is simply the transcript that I've cited as well as
10 representations of counsel, that while the Mississippi state
11 court litigation did have a tentative trial date and there
12 hadn't been substantial discovery in connection with it, there
13 have not been judicial proceedings beyond this litigation over
14 the stay and the amendment of the complaint. And there have
15 been attempts in this case or in connection with this case to
16 mediate the claims including the Lextron claim that was
17 assigned. This litigation is apparently not covered by
18 insurance and I conclude that based on those facts, in the
19 interest of judicial economy would argue for keeping the issues
20 involving the Lextron, Wachovia, Delphi matters here in one
21 central forum where both Lextron's claims and Wachovia's claims
22 are pending. And that the claim procedures order, particularly
23 since the parties have already conducted extensive discovery
24 and engaged in mediation, would permit if the parties wanted
25 and don't want to pursue further settlement, a prompt

1 resolution of the claims against Delphi by both Lextron and
2 Wachovia. So I'll deny that aspect of the motion as well.

3 Obviously, to the extent that Wachovia would seek
4 only to proceed against Mr. Graves, additional factors would
5 come into play including the fact that he is not the primary
6 defendant that in contrast with the Sonax factor, that looks to
7 whether a third party is a primary defendant here, Delphi would
8 be. Also it does not appear that he has gotten his own counsel
9 that has delved into the merits as opposed to just this lift
10 stay issue. But again, I can't imagine ever lifting the stay
11 to let it proceed just against him since Delphi is the real
12 party defendant as between him and Delphi.

13 So Mr. Berger you can submit an order to that effect.
14 You should show it to counsel for Wachovia first. You don't
15 have to settle it but show it to him and then submit it to
16 chambers.

17 MR. BERGER: I understand your instructions, Judge.
18 Thank you.

19 THE COURT: Okay.

20 MR. BUTLER: Your Honor, the next matter on the
21 agenda, matter number 11, is the debtor's tenth omnibus claims
22 objection. This is filed at docket number 7300. This is a
23 procedural objection. In this procedural objection we've
24 objected to 118 claims. Of those 118 claims we're seeking to
25 expunge and disallow a 115 proofs of claim asserting

1 liquidating damages of approximately 19.4 million dollars which
2 were duplicative of other proofs of claim or have been amended
3 or superseded by later filed claims. And also three proofs of
4 claims asserting unliquidated claim amounts which were filed by
5 holders in Delphi's common stock.

6 As of April 19, yesterday, preparing for the hearing,
7 there were eight timely filed formal responses to the
8 objection. Those covered thirteen claims asserting in the
9 aggregate about 12.7 million. Your Honor, we believe that one
10 of the responses which involved three claims covered by that
11 response involving Contrarian Funds it was resolved on the
12 terms of the objection. It doesn't really oppose the
13 disallowance of the three of its claims, but asks that we
14 recognize Contrarian's legal beneficial holder of the claims
15 that survived the claims.

16 We have agreed to recognize Contrarian's legal and
17 beneficial holder of the surviving claims and therefore that
18 response has been resolved and we're not seeking to adjourn as
19 to those three claims.

20 THE COURT: Okay. Was this an assignment of claim
21 issued? Did they have to file notice of sale of the claim to
22 them or --

23 MR. BUTLER: I believe they did that, Your Honor.

24 THE COURT: They did that. And there hasn't been an
25 objection by the seller, the assignor?

1 MR. BUTLER: No.

2 THE COURT: Okay.

3 MR. BUTLER: And I think, Your Honor, what happened
4 here with Contrarian was they simply wanted that if these three
5 were being wiped out they wanted acknowledgement that we were
6 not going to come back and later raise that issue.

7 THE COURT: Okay.

8 MR. BUTLER: And there are -- as to the remaining ten
9 claims covered by the other seven responses that were not
10 resolved we would seek to adjourn those. We have in our
11 omnibus reply filed yesterday filed a normal chart that we have
12 summarizing all of the matters that would be adjourned. And,
13 therefore Your Honor, today we seek relief with respect to the
14 uncontested matters, that's a 108 claims asserting liquidated
15 damages of approximately 10.4 million dollars. And as we
16 indicated in the omnibus reply we filed yesterday, the debtor's
17 have adjourned the hearing with respect to the ten claims
18 covered by the seven responses that have not been resolved.

19 THE COURT: Okay. And those will be governed by the
20 claims procedures?

21 MR. BUTLER: Yes, Your Honor.

22 THE COURT: All right. Does anyone want to address
23 the tenth omnibus claim objection? All right. Given that the
24 debtors are proceeding only with unopposed objections and based
25 on my review of the motion or the objection, I'll grant that

1 relief.

2 MR. BUTLER: Thank you, Your Honor. Your Honor, the
3 next matter on the agenda is matter number 12. This is our
4 eleventh omnibus claims objection, it's at docket number 7301,
5 and this is a substantive objection. This involves 520 claims
6 and the breakdown is as follows. We have objected to eight
7 proofs of claim in the aggregate amount of approximately
8 182,000 dollars, which the debtors assert contain insufficient
9 documentation to support those claims. We've objected to
10 eighty-four proofs of claims in the aggregate amount of
11 approximately nine million dollars, which the debtors assert
12 contain liabilities or dollar amounts that don't match our
13 books and records. We've objected to nine proofs of claims in
14 the aggregate amount of approximately 236,000 that we asserted
15 were not timely filed pursuant to the bar date order. And
16 we've objected to 419 proofs of claim in the aggregate amount
17 of approximately 30.5 million that we seek to modify subject
18 to further objection to fully liquidated claims in the
19 aggregate amount of approximately 24.1 million. We also seek
20 to change the identity of the alleged debtor classification.

21 As this latter group of claims, as Your Honor knows,
22 we have routinely filed in these substantive objections,
23 objections where we believe that we should reduce the amount of
24 the claim giving our right to continue to object later on the
25 merits. But we've been able to try to reduce the scope of the

1 objection, the scope of the claim. And that's what the
2 objection to the four hundred nineteen proofs of claim are.

3 As of April 19th we have received thirty-three formal
4 responses to this objection. Twenty-four were entered on the
5 docket. One was received by the debtors but appears to have
6 been a docketing error. And we have received additional eight
7 others that were not docketed, which the Court doesn't have but
8 which we have received. Of those thirty-three responses,
9 twenty-four were timely filed and there were eight that were
10 not timely filed and one subject to a docketing error. We
11 indicated the breakdown on our omnibus reply. All tolled these
12 responses cover fifty-four proofs of claim asserting liquidated
13 claims of about five million dollars.

14 There are, Your Honor, among these responses four
15 responses involving four claims that we don't seek to adjourn
16 because we've resolved them. And I want to summarize for Your
17 Honor, what those are before I go to the unresolved claims.
18 Three of the resolved responses pertain to claims which the
19 debtor seek only to change the identity of alleged debtor. We
20 don't seek to modify the dollar amount or classification of
21 those claims at this time. In reading the responses, it was
22 clear the respondents were not understanding that and we have
23 contacted each of those respondents to clarify the scope of the
24 relief, explain the debtors seek to modify at this time, either
25 the amount or the class of the claims, or rather seek only to

1 change the identity of the debtor entity and we didn't have any
2 objection to that. Those three respondents have agreed to the
3 relief that was requested and therefore we consider those to be
4 resolved.

5 The fourth resolved response covers a claim to which
6 the debtors objected on the basis the claimant applied the
7 wrong exchange rate when they converted their claim and the
8 claimant has now agreed with the debtors as to the appropriate
9 exchange rate. And that response has therefore been resolved.

10 Accordingly, those four responses that I just covered
11 for Your Honor, even though there were objections filed, they
12 should not be adjourned but the relief should be requested as
13 we have laid it out in the order that we have submitted to Your
14 Honor. With respect to the balance of the claims that have
15 been contested, we would seek to adjourn those. The
16 uncontested portions for which we seek relief is 470 claims
17 asserting liquidated damages of approximately thirty-five
18 million dollars. Among these the debtors seek to expunge
19 seventy-eight of these claims with a value of approximately
20 eight million. And with respect to the 392 remaining claims we
21 have sought to reduce the base amount of those claims from
22 approximately twenty-seven million to approximately twenty-one
23 and a half million dollars. The actual reduction is closer to
24 about 5.4 million, or otherwise modify the identity of the
25 debtor or the class of the claim. And Your Honor, as to the

1 balance of the claims that are being contested as to all the
2 contested matters, we would adjourn those, Your Honor, and deal
3 with them under the claims procedures order.

4 THE COURT: Okay. All right, so you're only going
5 forward, again, in connection with the order you're seeking
6 today on unopposed?

7 MR. BUTLER: Correct. Except for the four that I've
8 identified, Your Honor --

9 THE COURT: Which you've resolved.

10 MR. BUTLER: -- which we resolved, all the remaining
11 contested but unresolved claims are adjourned under the claims
12 procedures order and we will deal with those and bring them
13 before the Court in connection with the claims procedures
14 order.

15 THE COURT: All right. Based on that fact and my
16 review of the omnibus objection, I'll grant the objection as
17 sought.

18 MR. BUTLER: Thank you, Your Honor. Your Honor, the
19 remaining item on the calendar, item number 13, is the National
20 Union Fire Insurance Company adversary proceeding. Mr.
21 Berger's handling that.

22 THE COURT: Okay.

23 MR. BERGER: Judge, Neil Berger. This is the second
24 pre-trial conference for the adversary proceeding commenced by
25 the debtors against National Union Fire concerning coverage

1 issues. When I last appeared before Your Honor I mentioned
2 that there was an ADR provision in this policy. National
3 Union, I sense, is standing behind me and will confirm that
4 they have pointed to that. The parties have agreed to go to
5 mediation. There's a strong desire here, I can speak for the
6 debtors, to try to resolve this quickly. We'd like to keep
7 this on the calendar so that we can come back to Your Honor and
8 give you status reports. The time within which National Union
9 may answer the complaint has been extended by stipulation and
10 order, my office will work out a further stipulation to try to
11 get to that mediation and to get to a table quickly.

12 THE COURT: Okay. Well, I assume that National Union
13 wants to resolve quickly too, because there are adverse
14 consequences if you improperly deny coverage. And if the delay
15 causes more adverse consequences then that could be a problem.
16 I'm not saying that you have been improperly denied coverage
17 but I just would assume that the parties would want to resolve
18 this promptly.

19 MR. WILLIG: Yes, Your Honor. Good morning. Stephen
20 Willig of D'Amato & Lynch for National Union. Indeed we are
21 willing and ready to go forward with mediation. In fact, we've
22 reached out to insurance counsel as well to get the ball
23 moving.

24 THE COURT: This is mediation or actually binding --

25 MR. WILLIG: It's mediation, Your Honor. The ADR

1 allows for either arbitration or mediation.

2 THE COURT: Okay.

3 MR. WILLIG: Delphi has chosen mediation. The only
4 issue, Your Honor, is procedurally with regard to this action,
5 we had suggested simply a dismissal without prejudice. Delphi
6 is not willing to do that. With regard to putting it back on
7 the calendar in the event mediation is unsuccessful, the ADR
8 provision in the policy does provide for a 120 day waiting
9 period. We've suggested that to Delphi, I don't think they're
10 willing to agree to that.

11 THE COURT: I think given the bankruptcy case and the
12 fact that Delphi's out-of-pocket we should probably expedite
13 that.

14 MR. WILLIG: What would be the order on the record
15 with regard to this proceeding, would it be stayed in the
16 interim?

17 THE COURT: Well, there'll be no activity in the
18 proceeding during the ADR. You know, I think that you should
19 notify the Court if the ADR is determined to be unsuccessful
20 and the debtor can then seek to schedule a pre-trial conference
21 where we'll talk about scheduling. It may be as part of the
22 ADR you may have limited issues, you may have done informal
23 discovery, you know, I just don't know yet how quickly we would
24 proceed after that. So that's what I would suggest.

25 MR. WILLIG: And all the parties' rights are reserved

1 under the policy in the meantime.

2 THE COURT: Yes. Sure.

3 MR. WILLIG: Okay. Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, that concludes the calendar
6 for the April omnibus hearing. We will be back this afternoon
7 at --

8 THE COURT: Was that at 2?

9 MR. BUTLER: -- 2 o'clock for a chambers conference.

10 THE COURT: Okay. All right. Thank you.

11 MR. BUTLER: Thank you, Your Honor.

12 (Proceedings concluded at 11:25 a.m.)

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C E R T I F I C A T I O N

I, Esther Accardi, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

____ April 23, 2007____

Signature of Transcriber

Date

Esther Accardi _____

typed or printed name

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